



State of Wisconsin  
Governor Scott Walker

---

**Department of Agriculture, Trade and Consumer Protection**  
Ben Brancel, Secretary

**DATE:** September 3, 2014

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Ben Brancel, Secretary *Ben Brancel*  
Sandy Chalmers, Administrator, Trade and Consumer Protection Division *Sandy Chalmers*

**SUBJECT:** Ch. ATPC 104, Leaf Tobacco, Buying and Selling (Final Draft)

**PRESENTED BY:** Jeremy McPherson

**REQUESTED ACTION:**

At the September 17, 2014 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize a final draft of a proposed rule (copy attached) related to leaf tobacco, buying and selling.

**SUMMARY:**

*Background*

The existing ch. ATPC 104, Wis. Adm. Code, prohibits leaf tobacco buyers from engaging in certain practices:

- Attempting to induce another tobacco buyer to engage in specific activities that would artificially manipulate the market price for tobacco.
- Refusing to negotiate with any grower for the purchase of tobacco because such tobacco was previously graded or submitted for grade.
- Falsely representing in negotiations with a grower that any particular lot or crop of tobacco was purchased at less than the price actually paid, or that another tobacco buyer has or will cease buying tobacco.
- Purchasing tobacco under any contract which does not include a specific time within which delivery and payment are to be made.
- Giving or offering to give any grower any secret or separately stated bonus, commission, payment or other consideration.

The existing rule also prohibits tobacco growers or sellers from soliciting or receiving any secret or separately stated bonus, commission, payment or other consideration.

*Agriculture generates \$59 billion for Wisconsin*

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • 608-224-5012 • Wisconsin.gov

An equal opportunity employer

This rule was originally promulgated as Department of Agriculture General Order #138 in 1952. At that time, tobacco farming was a prominent business in Wisconsin, and much of the crop was sold in cash markets at the conclusion of the growing season. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract (as opposed to a cash market at the end of the season). This means that ch. ATCP 104, Wis. Adm. Code, as it is currently written, is irrelevant to the current industry.

### ***Rule Content***

This rule would repeal chapter ATCP 104, Leaf Tobacco, Buying and Selling, in its entirety.

### ***Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations***

There are no known federal statutes or regulations (existing or proposed) that are comparable to ch. ATCP 104, Wis. Adm. Code.

### ***Comparison with Rules in Adjacent States***

There are no known rules in adjacent states that are comparable to ch. ATCP 104, Wis. Adm. Code.

### ***Summary of Factual Data and Analytical Methodologies***

This proposed rule simply deletes an unused chapter from the administrative code. It does not rely on factual or analytical data other than anecdotal information that growing under contract has replaced cash markets.

### ***Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis***

Since repealing the rule has no effect on business (see above), no analysis is required under this section.

### ***Effect on Small Business***

This proposed rule would simply delete an outdated and obsolete chapter of the administrative code. DATCP does not anticipate any effect on small business.

### *Hearings*

DATCP held one public hearing on this rule on July 9, 2014 in Madison. There were no attendees at the hearing.

DATCP did not receive any written comments.

### *Changes from Hearing Draft*

DATCP made a couple technical corrections based on Rules Clearinghouse suggestions. However, there are no substantive policy changes from the hearing draft.

### *Next Steps*

If the Board approves this final draft rule, DATCP will transmit the final draft rule for the Governor's written approval and then for legislative committee review. If the Legislature takes no action to stop the rule, the DATCP Secretary will sign the final rulemaking order and transmit it for publication. The rule will take effect on the first day of the month following publication.



**RULEMAKING HEARING**  
**Public Hearing Appearances and Written Testimony**

***Rule Subject:*** Leaf Tobacco, Buying and Selling  
***Adm. Code Reference:*** ATPC 104, Wis. Adm. Code  
***Rules Clearinghouse #:*** 14-039  
***DATCP Docket #*** 14-R-01

**Public Comments Received**

DATCP received no comments on this rule.

**Public Hearing Attendance Cards-Position on Rule and Verbal Testimony**

DATCP held one public hearing on the rule:

- Madison on July 9, 2014

There were no attendees at the hearing.



**PROPOSED ORDER  
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION  
ADOPTING RULES**

- 1 The Wisconsin department of agriculture, trade and consumer protection proposes the following  
2 rule *to repeal* ch. ATCP 104; *relating to* leaf tobacco buying and selling.

---

**Analysis Prepared by the Department  
of Agriculture, Trade and Consumer Protection**

***Statutes Interpreted***

Statutes Interpreted: s. 100.20 (1), Stats.

***Statutory Authority***

Statutory Authority: ss. 93.07 (1) and 100.20 (2)(a), Stats.

***Explanation of Statutory Authority***

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 100.20 (2) (a), Stats., to promulgate administrative rules forbidding trade practices which are determined by the department to be unfair and prescribing trade practices that are determined by the department to be fair.

***Related Statutes and Rules***

There are no Wisconsin Statutes or other rules that regulate transactions between tobacco growers and tobacco buyers.

***Plain Language Analysis***

**Background**

The existing ch. ATCP 104, Wis. Adm. Code, prohibits leaf tobacco buyers from engaging in certain practices:

- Attempting to induce another tobacco buyer to engage in specific activities that would artificially manipulate the market price for tobacco.

- Refusing to negotiate with any grower for the purchase of tobacco because such tobacco was previously graded or submitted for grade.
- Falsely representing in negotiations with a grower that any particular lot or crop of tobacco was purchased at less than the price actually paid, or that another tobacco buyer has or will cease buying tobacco.
- Purchasing tobacco under any contract which does not include a specific time within which delivery and payment are to be made.
- Giving or offering to give any grower any secret or separately stated bonus, commission, payment or other consideration.

The existing rule also prohibits tobacco growers or sellers from soliciting or receiving any secret or separately stated bonus, commission, payment or other consideration.

This rule was originally promulgated as Department of Agriculture General Order #138 in 1952. At that time, tobacco farming was a prominent business in Wisconsin, and much of the crop was sold in cash markets at the conclusion of the growing season. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract (as opposed to a cash market at the end of the season). This means that ch. ATPC 104, Wis. Adm. Code, as it is currently written, is irrelevant to the current industry.

## **Rule Content**

This rule would repeal chapter ATPC 104, Leaf Tobacco, Buying and Selling, in its entirety.

### ***Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations***

There are no known federal statutes or regulations (existing or proposed) that are comparable to ch. ATPC 104, Wis. Adm. Code.

### ***Comparison with Rules in Adjacent States***

There are no known rules in adjacent states that are comparable to ch. ATPC 104, Wis. Adm. Code.

### ***Summary of Factual Data and Analytical Methodologies***

This proposed rule simply deletes an unused chapter from the administrative code. It does not rely on factual or analytical data other than anecdotal information that growing under contract has replaced cash markets.



*Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis*

Since repealing the rule has no effect on business (see above), no analysis is required under this section.

*Effect on Small Business*

This proposed rule would simply delete an outdated and obsolete chapter of the administrative code. DATCP does not anticipate any effect on small business.

*DATCP Contact Person*

Questions and comments related to this rule may be directed to:

Kevin Leroy  
Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone (608) 224-4925  
E-Mail: kevin.leroy@wisconsin.gov

- 
- 1        **SECTION 1.** Chapter ATCP 104 is repealed.
- 2        **SECTION 2. EFFECTIVE DATE:** This rule takes effect on the first day of the month
- 3 following publication in the Wisconsin Administrative Register, as provided in
- 4 s. 227.22(2)(intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By: \_\_\_\_\_  
Ben Brancel  
Secretary



**Wisconsin Department of Agriculture, Trade and Consumer Protection**

**Final Regulatory Flexibility Analysis**

**Rule Subject:** Leaf Tobacco Buying and Selling  
**Adm. Code Reference:** ATPC 104  
**Rules Clearinghouse #:** 14-039  
**DATCP Docket #:** 14-R-01

**Rule Summary**

This rule would repeal chapter ATPC 104, Leaf Tobacco, Buying and Selling, in its entirety.

**Background**

The existing ch. ATPC 104, Wis. Adm. Code, prohibits leaf tobacco buyers from engaging in certain practices:

- Attempting to induce another tobacco buyer to engage in specific activities that would artificially manipulate the market price for tobacco.
- Refusing to negotiate with any grower for the purchase of tobacco because such tobacco was previously graded or submitted for grade.
- Falsely representing in negotiations with a grower that any particular lot or crop of tobacco was purchased at less than the price actually paid, or that another tobacco buyer has or will cease buying tobacco.
- Purchasing tobacco under any contract which does not include a specific time within which delivery and payment are to be made.
- Giving or offering to give any grower any secret or separately stated bonus, commission, payment or other consideration.

The existing rule also prohibits tobacco growers or sellers from soliciting or receiving any secret or separately stated bonus, commission, payment or other consideration.

This rule was originally promulgated as Department of Agriculture General Order #138 in 1952. At that time, tobacco farming was a prominent business in Wisconsin, and much of the crop was sold in cash markets at the conclusion of the growing season. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract (as opposed to a cash market at the end of the season). This means that ch. ATPC 104, Wis. Adm. Code, as it is currently written, is irrelevant to the current industry.

### *Small Business Affected*

The existing rule regulates certain transactions between tobacco growers and tobacco manufacturing or brokerage firms. Tobacco growers are likely to be small businesses. However, the existing rule is limited to regulating cash-market transactions for tobacco leaves (which would occur after the crop is harvested). Wisconsin grown tobacco is no longer traded with this type of transaction. Instead, Wisconsin tobacco growers generally grow and sell on contracts that are negotiated before the growing season begins. Therefore, the existing rule is obsolete and has no effect on small business.

This proposed rule would simply delete an outdated and obsolete chapter from the administrative code. DATCP does not anticipate any effect on small business.

### *Reporting, Bookkeeping and other Procedures*

The proposed rule does not require any additional reporting, bookkeeping or other procedures.

### *Professional Skills Required*

The proposed rule does not require and additional professional skills.

### *Accommodation for Small Business*

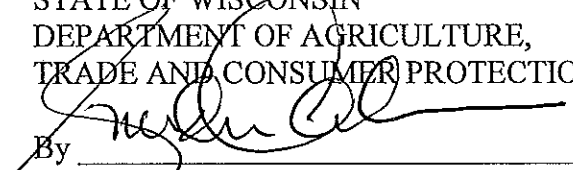
This proposed rule would simply delete an outdated and obsolete chapter of the administrative code, and does not have any effect on small business. Therefore, no accommodation is necessary.

### *Conclusion*

This rule does not have any impact on businesses, including "small businesses." It is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

Dated this 25 day of August, 2014.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By   
Sandy Chalmers, Administrator  
Division of Trade and Consumer Protection

# ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

☐ Original    ☒ Updated    ☐ Corrected

Administrative Rule Chapter, Title and Number

Ch. ATPC 104 Leaf Tobacco Buying and Selling

Subject

Leaf Tobacco Buying and Selling

Fund Sources Affected

Chapter 20, Stats. Appropriations Affected

☐ GPR    ☐ FED    ☐ PRO    ☐ PRS    ☐ SEG SEG-S

Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect  
☐ Indeterminate

☐ Increase Existing Revenues  
☐ Decrease Existing Revenues

☐ Increase Costs  
☐ Could Absorb Within Agency's Budget  
☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy

☐ Specific Businesses/Sectors

☐ Local Government Units

☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes    ☒ No

Policy Problem Addressed by the Rule

The existing rule regulates certain transactions between tobacco growers and tobacco manufacturing or brokerage firms. However, the existing rule is limited to regulating cash-market transactions for tobacco leaves (which would occur after the crop is harvested). Wisconsin grown tobacco is no longer traded with this type of transaction. Instead, Wisconsin tobacco growers generally grow and sell on contracts that are negotiated before the growing season begins. Therefore, the existing rule is obsolete.

This proposed rule would simply delete an outdated and obsolete chapter from the administrative code.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This proposed rule would simply delete an outdated and obsolete chapter from the administrative code. DATCP does not anticipate that it would have any economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

## *Benefits*

This proposed rule removes an obsolete and unneeded chapter from the Administrative Rules.

### *Alternatives*

DATCP could leave ch. ATCP 104, Wis. Stats. in place. The rule is obsolete, and does not impose any costs or benefits on tobacco growers or tobacco buyers.

DATCP could also modify the rule to make it more relevant to contemporary leaf-tobacco transactions.

#### Long Range Implications of Implementing the Rule

See the discussions above.

#### Compare With Approaches Being Used by Federal Government

There are no known federal statutes or regulations (existing or proposed) that are comparable to ch. ATCP 104, Wis. Adm. Code.

#### Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

There are no known rules in adjacent states that are comparable to ch. ATCP 104, Wis. Adm. Code.

#### Comments Received in Response to Web Posting and DATCP Response

No comments were received in response either to the posting on the DATCP external website or the statewide administrative rules website. There were also no comments received at the public hearings.